LE COPY

FILED
OCT 24 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 412

PEOPLE OF THE STATE OF ILLINOIS, ON RELATION OF GEORGE E. SANKSTONE,

Appellant,

vs.

EDMUND K. JARECKI, Judge of the County Court of Cook County, Illinois, **RICHARD J. DALEY**, County Clerk of Cook County, Illinois, **JOHN GUTKNECHT**, State's Attorney, Cook County, Illinois, Ex Officio acting as the **COUNTY OFFICERS ELECTORAL BOARD OF COOK COUNTY, ILLINOIS, LEAH M. WILEY, CHARLES F. CARPENTIER, SECRETARY OF STATE, OF THE STATE OF ILLINOIS**, and **SIDNEY T. HOLZMAN, MARIE H. SUTHERS, JOHN P. DALY**, comprising the **BOARD OF ELECTION COMMISSIONERS** for Chicago, Chicago Heights, Berwyn and Harvey, the Town of Cicero and the Villages of Summit, Stickney, Morton Grove, Elmwood Park, Skokie and Lyons, in the County of Cook and State of Illinois, and **LATHAM CASTLE**, Attorney General of the State of Illinois,

Appellees.

STATEMENT MAKING AGAINST THE JURISDICTION OF THIS COURT, MOTION TO DISMISS THE APPEAL OR TO AFFIRM THE JUDGMENT OF THE DISTRICT COURT, AND BRIEF IN SUPPORT OF SUCH MOTION ON BEHALF OF CHARLES F. CARPENTIER, SECRETARY OF STATE OF THE STATE OF ILLINOIS, AND LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, APPELLEES.

LATHAM CASTLE,
Attorney General of the State of Illinois,
Attorney for State Officials,
Suite 900, 160 N. LaSalle Street,
Chicago 1, Illinois.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

INDEX.

PAGE

Reference to Brief of Appellee County Officials for Statement of the Case 3

The Questions Presented 4

CASE CITED.

MacDougall v. Green, 335 U. S. 281 4

EED. THROUGH POOR COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 412.

PEOPLE OF THE STATE OF ILLINOIS, ON RELATION OF GEORGE E. SANKSTONE,

Appellant,

vs.

EDMUND K. JARECKI, Judge of the County Court of Cook County, Illinois, **RICHARD J. DALEY**, County Clerk of Cook County, Illinois, **JOHN GUTKNECHT**, State's Attorney, Cook County, Illinois, Ex Officio acting as the **COUNTY OFFICERS ELECTORAL BOARD OF COOK COUNTY, ILLINOIS, LEAH M. WILEY, CHARLES F. CARPENTIER, SECRETARY OF STATE, OF THE STATE OF ILLINOIS**, and **SIDNEY T. HOLZMAN, MARIE H. SUTHERS, JOHN P. DALY**, comprising the **BOARD OF ELECTION COMMISSIONERS** for Chicago, Chicago Heights, Berwyn and Harvey, the Town of Cicero and the Villages of Summit, Stickney, Morton Grove, Elmwood Park, Skokie and Lyons, in the County of Cook and State of Illinois, and **LATHAM CASTLE**, Attorney General of the State of Illinois,

Appellees.

STATEMENT MAKING AGAINST THE JURISDICTION OF THIS COURT, MOTION TO DISMISS THE APPEAL OR TO AFFIRM THE JUDGMENT OF THE DISTRICT COURT, AND BRIEF IN SUPPORT OF SUCH MOTION ON BEHALF OF CHARLES F. CARPENTIER, SECRETARY OF STATE OF THE STATE OF ILLINOIS, AND LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, APPELLEES.

Charles F. Carpentier, Secretary of State of the State of Illinois and Latham Castle, Attorney General of the State of Illinois, for the reasons set forth in the brief filed on behalf of appellee County Officers and the Brief in Sup-

ED. THROUGH POOR COPY

port of this Motion, respectfully show that this Court has no jurisdiction of this case on direct appeal, but that, if jurisdiction does exist, the appeal should be dismissed or the order appealed from should be affirmed.

CHARLES F. CARPENTIER,
Secretary of State of the State of Illinois,

and

LATHAM CASTLE,
Attorney General of the State of Illinois,

Appellees.

REFERENCE TO AND ADOPTION OF THE STATEMENT, MOTION AND BRIEF FILED BY APPELLEE COUNTY OFFICIALS.

The election officials of Cook County, co-appellees with the Secretary of State of the State of Illinois and the Attorney General of the State of Illinois, have filed their Statement Making Against this Court's Jurisdiction, Motion to Dismiss the Appeal or to Affirm the Judgment of the District Court and Brief in Support of Such Motion. The Secretary of State and the Attorney General adopt the Summary and Short Statement of the Matter Involved contained in that Statement and the grounds and arguments urged in support of the motion to dismiss or affirm.

There are, however, additional grounds for dismissal or affirmance, not suggested by the appellee county officials, which are concisively presented in the Brief in Support of This Motion.

CHARLES F. CARPENTIER,
Secretary of State of the State of Illinois,

and

LATHAM CASTLE,
Attorney General of the State of Illinois,

Appellees.

EED. THROUGH POOR COPY

BRIEF IN SUPPORT OF THE SECRETARY OF STATE'S AND THE ATTORNEY GENERAL'S MOTION TO DISMISS OR AFFIRM.

Reference to Brief of Appellee County Officials for Statement of the Case.

Appellee State Officials respectfully refer the Court to the brief of appellee County Officials for a Statement of the Case.

The Questions Presented.

The questions presented are:

1. Is the Act assailed by appellant unconstitutional?

2. Would the granting of an injunction on the eve of an election disenfranchise more voters than it would enfranchise?

I.

To Grant the Relief Sought by Appellant Would Be to Disfranchise More Electors Than It Would Enfranchise and Would Abuse, Indeed, Would Pervert the Process of This Court's Temporary Injunction.

Judicial elections in the various counties and circuits of Illinois are to be held on November 3d of this year.

It will not be feasible to reprint these ballots.

As the county officials have pointed out, the opinion on *MacDougall* v. *Green*, 335 U. S. 281, is conclusively dispositive of this case. That opinion holds that the act here assailed is constitutional. In addition to the grounds set forth in the opinion, we call the Court's attention to the

separate opinion of Mr. Justice Rutledge. The essence of that opinion is distilled in the following passage at pages 285 and 286:

> "* * * Even if we assume that appellants' constitutional rights have been violated, the questions arise whether, in those circumstances, the equity arm of the federal courts can now be extended to give effective relief; and whether the relief, if given, might not do more harm than good, might not indeed either disrupt the Illinois election altogether or disfranchise more persons than have been franchised by the application of the questioned Illinois procedures."

Mr. Justice Rutledge held that this question must be answered in the affirmative and that injunction should be denied, if for no other reason, because the granting of injunction would destroy more rights than it could protect.

We respectfully urge these considerations as grounds in opposition to appellant's application.

II.

The Requirement That Appellant's Application for a Place On the Judicial Ballot Be Supported by the Signatures of Five Per Cent of the Qualified Voters Is Eminently Reasonable.

Only a few words are necessary to vindicate, not only the constitutionality, but the sound common sense of the provision of the requirement that appellant elicit the support, attested by signatures to nominating papers, of five to eight per cent of the qualified voters of his county.

Ballots printed today are huge and rather complex documents, frequently containing, in addition to the names of aspirants for public office, intricate statements or summaries of referendum propositions.

These ballots should not be further encumbered with

ED. THROUGH POOR COPY

names of independent candidates or the candidates of minority parties unless there is widespread public demand for their candidacy.

An independent candidate who or a party which can not muster the support of even five per cent of the voting population has small chance indeed of success at the polls. Elections must be practical.

As appellee county officials point out, the Progressive Party of Illinois in fact regularly enlists the support of the required number of signators for its nominating papers.

All that the Illinois statute does is require that one-twentieth of the qualified voters attest their support for an aspirant to county office. Surely that requirement is not unreasonable!

III.

Even if the Provision Assailed by Appellant Were Invalid, He Would Not Be Entitled to a Place on the Judicial Ballot; for the Excision of That Requirement From the Act Would Leave No Provision By Which Appellant Could Have His Name Placed in Candidacy.

Appellant does not seek categorically to inhibit the November 3d judicial election because the laws under which it is to be held are, according to appellant's logic, unconstitutional. All that is before this Court is his request that the election be stayed *unless he be given a place on the ballot.*

But if appellant were correct in his argument that the provisions for placing his name on the ballot are unconstitutionally onerous, there would be no provision in the law for placing his or any other independent or minority candidate on the ballot. Appellant can not have it both ways. He cannot simultaneously assert that the forthcom-

ing judicial election is to be held under unconstitutional auspices and ask to participate in that election as a candidate.

Conclusion.

For reasons urged in the brief of appellee county officers and this brief, it is respectfully submitted that this appeal should be dismissed or the judgment of the district court should be affirmed.

Respectfully submitted,

LATHAM CASTLE,
Attorney General,
Attorney for
CHARLES F. CARPENTIER,
Secretary of State of the State of Illinois,
and
LATHAM CASTLE,
Attorney General of the State of Illinois,
Appellees,
160 N. La Salle Street,
Room 900,
Chicago 1, Illinois.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

LEED. THROUGH POOR COPY